

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MAEWEATHERS MARSHALL,  
Plaintiff,  
v.  
J. HAMMAD, et al.,  
Defendants.

Case No. [17-cv-03329-SI](#)

**ORDER OF DISMISSAL**

Re: Dkt. No. 1

Maeweathers Marshall, an inmate at the California State Prison - Sacramento, commenced this action by filing a complaint alleging that officials at Alameda County Jail, where he earlier was housed, had violated his constitutional rights to be free from cruel and unusual punishment and to be free from retaliation for complaining. Marshall alleged that, deputies at the Alameda County Jail refused to give him his lunch on July 6, 2016, to retaliate against him after he asked for a grievance form to use to complain about some other jail condition. Marshall further alleged that, if the deputies thought he was going to “gas” them (i.e., throw urine or feces on them), other correctional staff could have delivered his lunch to him, or other methods could be used by the deputies to deliver his lunch in a manner to minimize the risk of being gassed by him.

Marshall’s complaint is now before the court for review under 28 U.S.C. § 1915A, which requires the court to identify any cognizable claims, and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief.

The complaint in this action repeats claims made in *Marshall v. Alameda County*, Case No. 17-cv-3310 DMR. Although the complaint in Case No. 17-cv-3310 DMR includes additional claims, the claim about the denial of lunch on July 6, 2016 as retaliation also is alleged. *See*

1 Docket No. 1 at 9 in Case No. 17-cv-3310 DMR. The complaint in this action is frivolous because  
2 it asserts claims duplicative of those raised in the earlier action. *See Cato v. United States*, 70  
3 F.3d 1103, 1105 n.2 (9th Cir. 1995); *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988)  
4 (duplicative or repetitious litigation of virtually identical causes of action is subject to dismissal  
5 under 28 U.S.C. § 1915 as malicious); *see also Adams v. California Dept. of Health Services*, 487  
6 F.3d 684, 689 (9th Cir. 2007) ("Plaintiffs generally have 'no right to maintain two separate actions  
7 involving the same subject matter at the same time in the same court and against the same  
8 defendant.'")

9 Accordingly, this action is DISMISSED with prejudice because it is frivolous. The clerk  
10 shall close the file.

11 **IT IS SO ORDERED.**

12 Dated: September 19, 2017



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SUSAN ILLSTON  
United States District Judge